

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

THERON KENNETH HOLSTON,¹
Plaintiff,
v.
G. VIERA ROSA,
Defendant.

No. 2:20-cv-01076-KJM-CKD P

ORDER AND

FINDINGS AND RECOMMENDATIONS

Plaintiff is a county inmate proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Currently pending before the court is plaintiff's motion for a temporary restraining order filed on June 26, 2020.² ECF No. 10. The motion has now been fully briefed. ECF Nos. 40, 46, 48. For the reasons explained below, the court recommends granting the motion, in part, and denying it, in part.

Before addressing the motion for a temporary restraining order, however, the court will

¹ The court hereby revokes its order of June 17, 2020 granting plaintiff's motion to proceed under the pseudonym "John Doe" for the reasons explained herein. As a result, the court has updated the case caption.

² The court has applied the prison mailbox rule in determining the filing date for plaintiff's pleadings sent while incarcerated. See Houston v. Lack, 487 U.S. 266 (1988).

1 resolve several pending ancillary motions filed by both parties.

2 **I. Plaintiff's Motion to Display His Real Name**

3 From the outset of this case, plaintiff has been proceeding under the pseudonym "John
4 Doe." See ECF No. 4. In light of plaintiff's pro se status and incarceration, the order made it
5 clear that plaintiff's real name was retained by the Clerk's Office for purposes of service of
6 process only and was not viewable on the publicly accessible electronic docket. See ECF No. 4 at
7 2. Despite this added complexity, the Clerk's Office has ensured proper service and reservice of
8 court orders throughout the pendency of this case despite plaintiff's multiple changes of address.
9 See ECF Nos. 11-13, 16, 24-25, 31, 34.

10 However, on April 18, 2021, plaintiff filed a notice that disclosed his true identity. ECF
11 No. 42. The court is perplexed by plaintiff's self-disclosure because he had already been
12 informed that the Clerk's Office retained his real name for service of process purposes. ECF No.
13 42. Therefore, he did not have to inform the Clerk of Court of his true identity. See ECF No. 4 at
14 2.

15 Several days after making this disclosure, plaintiff filed a motion to display his real name
16 on the service copy of all court orders. ECF No. 43. In support thereof, plaintiff indicates that he
17 has had difficulty receiving copies of orders addressed to "John Doe" even though they contain
18 his individual jail booking number. ECF No. 43 at 2. His solution to this problem is a request
19 that the Clerk of Court add a blank page to every court order that includes his real name and
20 appears as the addressee on the envelope. ECF No. 43 at 3.

21 The court will not require the Clerk of Court to take any additional steps to ensure
22 plaintiff's anonymity in this case in light of his own disclosure of his real name in a public filing.³
23 See ECF No. 42. Therefore, the court will deny plaintiff's motion.

24 In addition, the court will revoke its order of June 17, 2020 that allowed plaintiff to
25 proceed under the pseudonym "John Doe." ECF No. 4. The Clerk of Court is directed to update
26

27 ³ Plaintiff additionally failed to redact his name in attachments to his reply to defendant's
28 opposition to his motion for a temporary restraining order further undercutting the court's order
allowing him to proceed as John Doe. See ECF No. 46 at 103.

1 the caption of this case to reflect plaintiff's true identity. All future filings in this case shall
2 reflect this change.

3 **II. Plaintiff's Motion to Seal Proceedings**

4 In an additional attempt to conceal his identity, plaintiff filed a motion asking the court to
5 seal the entire case from public access based on events that occurred while plaintiff was
6 incarcerated. ECF No. 47. Plaintiff indicates that "it was discovered by... inmates that plaintiff
7 is using the pseudonym John Doe in this action." ECF No. 47 at 2. As a result, plaintiff
8 expresses concern for his safety while incarcerated as well as after he is released. Id. As a
9 remedy, plaintiff seeks to have his entire case sealed from public access. Id. However, he does
10 not explain how any such action will be able to undo what inmates have already learned about his
11 prior criminal history. Since this information has already been gleaned from court orders using a
12 pseudonym, the court will deny plaintiff's motion to seal the entire record of this action. ECF
13 No. 47.

14 **III. Plaintiff's Motion to Reinstate the ADR Order**

15 In a separately filed motion, plaintiff requests the court to reinstate its order requiring the
16 parties to participate in a settlement conference based on his anticipated release date of May 30,
17 2021. ECF No. 44 at 2; see also ECF No. 39.

18 Defendant filed a statement of non-opposition to plaintiff's request for a court-ordered
19 settlement conference. ECF No. 41. In it, defendant indicates that "the parties have discussed the
20 possibility of reaching a resolution to this case informally." ECF No. 41 at 1.

21 Based on plaintiff's anticipated release and the agreement of both parties, the court will
22 grant plaintiff's motion to schedule a settlement conference in this case. However, in so doing,
23 the court notes plaintiff's prior difficulties in participating in Zoom video conferences while out
24 of custody. See Holston v. Petrinovich, Case No. 2:18-cv-03180-CKD (E.D. Cal.) at ECF No. 93
25 (Defendant's Motion for Terminating Sanctions based on plaintiff's failure to appear at two
26 scheduled remote depositions). Therefore, the court will not order a futile act by scheduling a
27 Zoom settlement conference in this matter. The settlement conference to be scheduled by
28 separate order in this case will be conducted by telephone in order to ensure plaintiff's access to

1 and participation therein.

2 **IV. Defendant's Request for Substitution of Defendant**

3 Since he is no longer plaintiff's parole agent, Defendant Alderson filed a request to
4 substitute G. Viera Rosa, the Director of the Division of Adult Parole Operations, as the
5 appropriate defendant in this action. ECF No. 45. In order "to expedite the adjudication of
6 Plaintiff's claims, G. Viera Rosa agrees to be substituted for Defendant Alderson in this action,
7 and to be represented by the California Attorney General's Office in this matter." ECF No. 45 at
8 1-2. The motion for substitution is limited to the official capacity claims seeking injunctive relief.
9 Id. at 2.

10 Plaintiff filed an opposition to the request for substitution indicating that he is not "willing
11 to abandon his complaint against defendant Alderson in his individual as well as official
12 capacity." ECF No. 49 at 3.

13 Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, a public officer's
14 successor may be substituted as a party in an action when a "public officer who is a party in an
15 official capacity dies, resigns, or otherwise ceases to hold office while the action is pending." See
16 Gilman v. Perez, Case No. CIV S-05-0830 LKK GGH P, 2006 WL 2091970, at *2 (E.D. Cal.
17 July 26, 2006) (granting motion to substitute current parole commissioners in a § 1983 action
18 seeking to enjoin parole commissioners from relying on certain evidence). In this case, defendant
19 Alderson was promoted to a different position on January 1, 2021 and is no longer able to change
20 any of the special conditions of plaintiff's parole. ECF No. 40-1 at 1. Thus, pursuant to Rule
21 25(d), the court will grant defendant's request to substitute G. Viera Rosa as the proper defendant
22 in this action. ECF No. 45.

23 **V. Plaintiff's Motion for a Temporary Restraining Order**

24 The operative complaint in this proceeding was filed on June 26, 2020. The court
25 screened plaintiff's complaint and concluded that defendant was immune from the claims seeking
26 monetary damages. See ECF No. 15 at 4-5. These claims were dismissed without leave to
27 amend by order dated January 29, 2021. ECF No. 29. Therefore, this case is proceeding on
28 plaintiff's First and Fourteenth Amendment claims against defendant Rosa for injunctive relief

1 challenging 36 out of 56 special conditions of his parole. ECF No. 29

2 On the same day that he filed his complaint, plaintiff also filed a motion for a temporary
3 restraining order (“TRO”) to prevent defendant from enforcing the challenged special conditions
4 upon plaintiff’s release from custody. ECF No. 10. The motion challenged the special conditions
5 that were signed on August 5, 2019. See ECF No. 46 at 61-66. However, these special
6 conditions of parole were superseded by new parole terms signed by plaintiff on September 23,
7 2020.⁴ Based on the parties’ briefs, it appears to the court that the September 23, 2020 parole
8 conditions are still in effect with the exception of the removal of Special Condition Numbers 55-
9 56. See ECF No. 48 (Notice of Change in Circumstances). Therefore, the court will limit its
10 discussion of the parties’ briefs to the relevant special conditions still in effect and will refer to
11 each special condition by the number listed in the form signed on September 23, 2020.⁵ See ECF
12 No. 40-2 at 6-10.

13 As a general matter, plaintiff contends in his TRO motion that the special conditions are
14 not justified based on his “decades old sex offense convictions and that they do not promote the
15 goals of public safety and deterrence.” ECF No. 10 at 8. Plaintiff alleges that their arbitrary
16 imposition violates his Fourteenth Amendment substantive due process rights. ECF No. 10 at 18.
17 To demonstrate this, plaintiff indicates that his most recent conviction for any sexual offense
18 occurred over 20 years ago. ECF No. 10 at 10. Plaintiff was convicted of the felony of indecent
19 exposure in 2001, sexual battery in 1987, and the misdemeanor of indecent exposure in 1986. Id.
20 None of these convictions involved a minor victim. ECF No. 46 at 75. Notably, the conviction
21 that led to plaintiff’s placement on parole was a conviction for obstructing or resisting an
22 executive officer. ECF No. 10 at 23; see also Cal. Penal Code § 69. Plaintiff alleges that “[n]one
23 of the special conditions of parole at issue here are reasonably related to future criminality..., but
24 are rather blanket prohibitions imposed categorically based on plaintiff’s status as a P.C. 290
25 registrant; the precise opposite of ‘narrowly drawn’ and ‘specifically tailored’ conditions required

26 ⁴ There is a total of 40 special parole conditions listed in the September 23, 2020 parole form.

27 ⁵ For this reason, the court limits its description of plaintiff’s TRO motion to the general legal
28 argument contained therein and focuses on the specific parole conditions challenged in plaintiff’s
reply as it relates to the September 23, 2020 parole terms.

1 when constitutional rights are infringed upon.” ECF No. 10 at 19, 24.

2 By way of opposition to the TRO motion,⁶ defendant contends that plaintiff is required to
3 comply with two of the special conditions as a matter of state statute. See Cal. Penal Code § 290.
4 Thus, even if these conditions were removed, plaintiff would still be required to comply with
5 them. As a result, plaintiff cannot demonstrate that he will suffer any irreparable harm if these
6 conditions are not immediately removed. ECF No. 40 at 6. Defendant further asserts that the
7 remaining special conditions have a nexus to plaintiff’s prior sex crimes or are needed to prevent
8 his recidivism as evidenced by a declaration from plaintiff’s former parole agent, S. Alderson.⁷
9 ECF No. 40-1 (Declaration of S. Alderson). Thus, they are not “arbitrary and oppressive” and
10 plaintiff’s motion for a TRO should be denied. ECF No. 40 at 6.

11 In his reply, plaintiff indicates that he is challenging 21 of the 40 special parole conditions
12 imposed on September 23, 2020, which he concedes are his current parole terms. ECF No. 46 at
13 14, 43.

14 With respect to the special conditions that overlap state statutory requirements, plaintiff
15 argues that they should not apply because he was discharged from CDCR custody and placed on
16 parole for an offense that does not require sex offender registration. ECF No. 46 at 28-29.

17 Specifically, plaintiff challenges special condition number 12 which prohibits dating or
18 forming a romantic relationship with any person who has minor children based on the Ninth
19 Circuit’s decision in United States v. Wolf Child, 699 F.3d 1082 (2012). ECF No. 46 at 31.
20 Plaintiff alleges that this condition harms him by preventing him from socializing with adult
21 females and even his daughter and step-daughter, both of whom have physical custody of a minor
22 child. ECF No. 46 at 45, 88-90.

23 According to plaintiff, the four special conditions that relate to travel (Nos. 19-22) make
24 it more difficult for him to obtain employment. ECF No. 46 at 46. With respect to special

25
26 ⁶ The court excludes the portions of defendant’s opposition that relate to special conditions that
27 are no longer in effect. Likewise, the court deems defendant’s argument challenging personal
jurisdiction to be moot based on the request to substitute G. Viera Rosa for defendant Alderson.

28 ⁷ The court did not consider any of the information related to plaintiff’s arrests that did not lead to
any subsequent conviction.

1 condition number 23, which requires pre-approval of any employment, plaintiff argues that this
2 prevents him from doing day labor jobs or employment in his trained field of heating and air
3 conditioning repair. ECF No. 46 at 46. While plaintiff indicates discussing his past HVAC
4 training with his former parole agent, he does not indicate any actual employment offer that he
5 received which was not approved. ECF No. 46 at 79. Plaintiff indicates that he is “likely to
6 suffer irreparable harm...due to this special condition.” ECF No. 46 at 81, 83. Of note, plaintiff
7 reports last being employed in the HVAC field in 2000. Id.

8 Plaintiff challenges the special conditions related to his residency (Nos. 24, 27, 28, 30)
9 because they infringe on his freedom of association with others including other convicted sex
10 offenders. He specifically states that Special Condition No. 24 prevents him from staying at a
11 residential Christian discipleship program in El Dorado County because it does not have the
12 required government permit. ECF No. 46 at 47.

13 Rather than follow the current special condition of a curfew from 10 p.m. to 5 a.m.
14 (Special Condition No. 27), plaintiff requests that a TRO issue to prevent the imposition of any
15 curfew. ECF No. 46 at 32-33. In support of this request, plaintiff indicates that his curfew
16 prevents him from recycling cans “to gain a modest income.” ECF No. 10 at 15.

17 **VI. Legal Standards**

18 **A. Requirements for a Temporary Restraining Order**

19 A temporary restraining order is an extraordinary and temporary “fix” that the court may
20 issue without notice to the adverse party if, in an affidavit or verified complaint, the movant
21 “clearly show[s] that immediate and irreparable injury, loss, or damage will result to the movant
22 before the adverse party can be heard in opposition.” See Fed. R. Civ. P. 65(b)(1)(A). A
23 preliminary injunction represents the exercise of a far-reaching power not to be indulged except
24 in a case clearly warranting it. Dymo Indus. v. Tapeprinter, Inc., 326 F.2d 141, 143 (9th Cir.
25 1964). “A preliminary injunction... is not a preliminary adjudication on the merits but rather a
26 device for preserving the status quo and preventing the irreparable loss of rights before
27 judgment.” Sierra On-Line, Inc. v. Phoenix Software, Inc., 739 F.2d 1415, 1422 (9th Cir. 1984).

28 “The proper legal standard for preliminary injunctive relief requires a party to demonstrate

1 ‘that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the
2 absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction
3 is in the public interest.’” Stormans, Inc. v. Selecky, 586 F.3d 1109, 1127 (9th Cir. 2009) (citing
4 Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 22 (2008) (internal quotations omitted).
5 The Ninth Circuit’s sliding-scale test for a preliminary injunction has been incorporated into the
6 Supreme Court’s four-part Winter’s standard. Alliance for Wild Rockies v. Cottrell, 632 F.3d
7 1127, 1131 (9th Cir. 2011) (explaining that the sliding scale approach allowed a stronger showing
8 of one element to offset a weaker showing of another element). ‘In other words, ‘serious
9 questions going to the merits’ and a hardship balance that tips sharply towards the plaintiff can
10 support issuance of an injunction, assuming the other two elements of the Winter test are also
11 met.’ Alliance, 632 F.3d at 1131-32 (citations omitted). A plaintiff “must establish that
12 irreparable harm is likely, not just possible, in order to obtain a preliminary injunction.” Alliance
13 for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131 (9th Cir. 2011).

14 A motion for preliminary injunction must be supported by “[e]vidence that goes beyond
15 the unverified allegations of the pleadings.” Fidelity Nat. Title Ins. Co. v. Castle, No. C-11-
16 00896-SI, 2011 WL 5882878, *3 (N.D. Cal. Nov. 23, 2011) (citing 9 Wright & Miller, Federal
17 Practice & Procedure § 2949 (2011)). The plaintiff, as the moving party, bears the burden of
18 establishing the merits of his or her claims. See Winter v. Nat. Res. Def. Council, Inc., 555 U.S.
19 7, 20 (2008).

20 Additionally, this case is governed by the Prison Litigation Reform Act as it was filed
21 while plaintiff was an inmate at the El Dorado County Jail. As a result, any temporary restraining
22 order or preliminary injunction must be narrowly drawn, extend no further than necessary to
23 correct the harm the court finds requires preliminary relief, and be the least intrusive means
24 necessary to correct the harm. See 18 U.S.C. § 3626(a)(2).

25 **B. Substantive Due Process Standard**

26 With respect to demonstrating success on the merits of his underlying substantive due
27 process challenge to the special conditions of his parole as being arbitrary and oppressive official
28 action, plaintiff must demonstrate that a government officer abused his or her power or employed

1 it “as an instrument of oppression.” See Collins v. Harker Heights, 503 U.S. 115, 126 (1992)
2 (quoting DeShaney v. Winnebago County Dept. of Social Servs., 489 U.S. 189, 196 (1989).
3 “[T]his guarantee of [substantive] due process has been applied to *deliberate* decisions of
4 government officials to deprive a person of life, liberty, or property.” Daniels v. Williams, 474
5 U.S. 327, 331 (1986) (emphasis in original). Plaintiff specifically ties his due process claim to
6 provisions of state law that require special conditions of parole regulating conduct that is not
7 criminal to be reasonably related to the crime for which he was convicted or to deter his future
8 criminality. See ECF No. 7 at 10-11 (complaint) (citing People v. Lent, 15 Cal.3d 481, 486
9 (1975), superseded on other grounds as explained in People v. Moran, 1 Cal.5th 398 (2016)). “A
10 condition of probation which (1) has no relationship to the crime of which the offender was
11 convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct
12 which is not reasonably related to future criminality does not serve the statutory ends of probation
13 and is invalid.” People v. Dominguez, 256 Cal.App.2d 623, 627 (1967) (invalidating a condition
14 of probation that prohibited a woman from becoming pregnant without being married).
15 Importantly, “[i]f available alternative means exist which are less violative of the constitutional
16 right and are narrowly drawn so as to correlate more closely with the purposes contemplated,
17 those alternatives should be used....” People v. Smith, 152 Cal.App.4th 1245, 1250-51 (2007)
18 (quoting In re White, 97 Cal.App.3d 141, 144 (1979) (finding “a blanket prohibition against being
19 in a designated area of Fresno ‘anytime, day or night’” to be overly broad and unreasonable).

20 **VII. Analysis**

21 Before addressing the substance of plaintiff’s TRO motion, the court finds it necessary to
22 narrow the issues presently before the court because the parties have vastly different views on the
23 scope of the issues to be adjudicated.

24 **A. Issues Not Before the Court**

25 The parties acknowledge that the special parole conditions at issue when the TRO motion
26 was filed are no longer in effect because they were superseded by new conditions signed on
27 September 23, 2020. See ECF No. 40-2. Some of the original conditions have been removed,
28 some have been modified, and others have been added anew as explained in an appendix filed by

1 plaintiff in reply to defendant's opposition. See ECF No. 46 at 53-57. Despite these changes,
2 plaintiff seeks an order enjoining the enforcement of the non-operative 2019 conditions as well as
3 the operative 2020 special parole conditions because "all it takes is plaintiff[']s being assigned to
4 a new [parole] agent for another set of conditions that could re-impose those removed to again
5 become operative." ECF No. 46 at 27.

6 The federal court is a court of limited jurisdiction and may only resolve actual "cases" and
7 "controversies." U.S. Const. art. III, § 2. "The absence of either denies a federal court the power
8 to hear a matter otherwise before it." Rivera v. Freeman, 469 F.2d 1159, 1163 (9th Cir. 1972).
9 The court is not in the business of issuing advisory opinions on matters that are not currently in
10 dispute, but could become issues in the future only if certain conditions change. See Thomas v.
11 Anchorage Equal Rights Comm'n, 220 F.3d 1134, 1138 (9th Cir. 2000) (emphasizing that the role
12 of courts "is neither to issue advisory opinions nor to declare rights in hypothetical cases, but to
13 adjudicate live cases or controversies consistent with the powers granted the judiciary in Article
14 III of the Constitution."). The undersigned finds that plaintiff's challenges to the 2019 non-
15 operative special parole conditions are not in controversy at this time and are, therefore, not
16 justiciable. Therefore, the court limits its ruling on plaintiff's TRO motion only to the operative
17 special parole conditions that were signed on September 23, 2020.

18 The court also notes that two of the challenged special conditions related to plaintiff's use
19 of social media sites have been removed. See ECF No. 48 (Defendant's Notice of Change in
20 Circumstances). Plaintiff will not be required to comply with special conditions number 55 and
21 56 upon his release from custody on May 30, 2021. Id. Therefore, the undersigned finds that
22 these claims in the TRO motion are now moot. For this reason, the court will not address the
23 First Amendment claims presented in the TRO motion and recommends denying this portion of
24 the motion on mootness grounds.

25 To the extent that plaintiff references the sex offender and GPS conditions of his parole,
26 the court will not address these because plaintiff's complaint specifically avoided challenging
27 these special conditions in order to avoid a Heck bar. See ECF No. 15 at 2 (screening order);
28 ECF No. 7 at 6 (complaint); see also Heck v. Humphrey, 512 U.S. 477, 487 (1994). Indeed,

1 plaintiff concedes that the GPS terms of his parole are not at issue in the pending TRO motion
2 because his parole was revoked for violating these same conditions. ECF No. 46 at 44.

3 Likewise, the court understands plaintiff's reply to defendant's opposition to the TRO
4 motion as no longer challenging the special conditions that are redundant to the registration
5 requirements of California Penal Code § 290 through 290.015. See ECF No. 46 at 57 (not
6 labeling these conditions as applicable to the TRO motion). Even if plaintiff challenges these
7 special conditions, the court would not be able to provide any relief from these statutory
8 requirements. Therefore, the court's ruling does not address the registration requirements of
9 Penal Code § 290.

10 **B. Issues Before the Court**

11 For purposes of analysis, the court will utilize the categories of conditions listed in the
12 Special Conditions of Parole signed on September 23, 2020 and will apply the four-part Winter's
13 standard to each category. ECF No. 40-2 at 6-10.

14 **1. Relationships (Special Condition Nos. 12-13)**

15 The two special conditions of parole related to plaintiff's relationships include a
16 restriction on "dat[ing], socializ[ing], or form[ing] a romantic interest or sexual relationship with
17 any person you know or reasonably should know has physical custody of a minor." ECF No.40-2
18 at 6 (Special Condition Number 12). Plaintiff is also required to "inform all persons with whom
19 you have a significant relationship; e.g., dating and/or roommate(s), about your criminal history,
20 and you will inform your parole agent about the relationship." Id. (Special Condition Number
21 13). While Special Condition Number 12 is a blanket prohibition on any relationships with an
22 adult who has a minor child, Special Condition Number 13 is limited only to those persons with
23 whom plaintiff develops a "significant relationship." According to plaintiff's former parole
24 officer, Special Condition Number 13 was imposed "to protect public safety by ensuring that
25 before someone employs Plaintiff or allows him to live in their home, they are aware of his status
26 as a sex offender, and thus can make an informed decision." ECF No. 40-1 at 5. However,
27 Special Condition Number 12 was added to plaintiff's parole terms beginning in September 2020.
28 Thus, plaintiff's former parole officer did not deem this special condition necessary. See ECF

1 No. 40-1 at 2 (describing the process for selecting special conditions of parole). There is no
2 evidence in the record explaining the recent imposition of Special Condition Number 12 which
3 applies to all adults who have custody of minor children. Compare ECF No. 40-2 at 6 (2020
4 Special Conditions) with ECF No. 46 at 62 (2019 Special Conditions only requiring plaintiff to
5 inform individuals with whom he has a significant relationship of his criminal history).
6 Defendant did not produce any affidavit from the parole agent or unit supervisor responsible for
7 adding this special condition to plaintiff's parole as of September 23, 2020. The court finds this
8 evidentiary gap troubling in light of the blanket restriction being imposed.

9 Turning now to the requirements for injunctive relief, the court will address each special
10 condition separately. The first requirement for a TRO requires plaintiff to demonstrate that he is
11 likely to succeed on the merits of his substantive due process. Winter v. Natural Res. Def.
12 Council, Inc., 555 U.S. 7, 22 (2008). In order to do this as it relates to Special Condition Number
13 12, plaintiff cites to United States v. Wolf Child, 699 F.3d 1082 (9th Cir. 2012). In that case, the
14 Ninth Circuit invalidated a special condition of supervised release which prohibited a probationer
15 from socializing with or dating anybody with children under the age of 18, including his fiancée,
16 without prior written approval from his probation officer. Id. The special condition was
17 substantively unreasonable because it affected a fundamental liberty interest and was not
18 narrowly tailored. “[W]e cannot comprehend how such broad prohibitions, encompassing so
19 many people and circumstances without any narrowing provisions, are reasonably limited to the
20 goals of deterrence, protection of the public, or rehabilitation. These broad conditions entail a
21 greater deprivation of liberty than is necessary to achieve those goals.” Wolf Child, 699 F.3d at
22 1101-02. The same fundamental liberty interest is involved in the present case based on
23 plaintiff's inability to socialize with his own daughter and step-daughter who have custody of
24 minor children. Plaintiff's status as a convicted sex offender is not sufficient in and of itself to
25 warrant restraining his right to associate with his own family members without an individualized
26 assessment of the need for the blanket prohibition. See Wolf Child, 699 F.3d at 1094
27 (emphasizing that the “need to avoid generalizing across all sex offenders ‘is all the more
28 important in cases such as this, where a particularly strong liberty interest is at stake.’”)). Like in

1 Wolf Child, “nothing in the commission of… an attempted sexual assault on a stranger, suggests
2 that Wolf Child would violate a familial relationship or present a danger *to his own daughters.*”
3 699 F.3d at 1099 (emphasis in original). In light of the blanket prohibition of Special Condition
4 Number 12 without any evidence in the record connecting plaintiff’s sexual convictions to any
5 minor victim, the undersigned finds that plaintiff has met his burden of demonstrating a
6 likelihood of success on the merits. See Wolf Child, 699 F.3d at 1090-91 (citing United States v.
7 Soltero, 510 F.3d 858, 865-66 (9th Cir. 2007)).

8 The second requirement for a TRO requires plaintiff to demonstrate that he is likely to
9 suffer irreparable harm in the absence of preliminary relief. Winter, 555 U.S. at 22. The
10 undersigned finds that plaintiff has made specific factual averments under oath demonstrating the
11 harm to his relationships with his daughter and step-daughter both of whom have custody of
12 minor children. ECF No. 46 at 45. Such restraint on his association with his family members
13 will occur upon his release from incarceration on May 30, 2021. Therefore, the undersigned finds
14 that plaintiff has adequately demonstrated a likely harm that will occur in the absence of
15 preliminary relief.

16 Third, plaintiff must demonstrate that the balance of equities tips in his favor to justify the
17 issuance of a TRO. Winter, 555 U.S. at 22. Plaintiff asserts that the balance of hardships tip
18 heavily in his favor because a TRO will protect his fundamental constitutional rights. ECF No.
19 46 at 51. See also Goldie’s Bookstore, Inc. v. Superior Court, 739 F.2d 466, 472 (noting that
20 “[a]n alleged constitutional infringement will often alone constitute irreparable harm.”). The
21 court agrees that in light of the fundamental right at issue, i.e. familial association, the balance of
22 equities tips in plaintiff’s favor.

23 Lastly, plaintiff must establish that a preliminary injunction is in the public interest.
24 Winter, 555 U.S. at 22. While public safety is certainly a prevailing concern as it relates to
25 special parole conditions, the court does not find that there is adequate evidence in the record to
26 conclude that Special Condition Number 12’s blanket prohibition on social interactions with
27 adults who have custody of minor children is required to achieve that purpose. Absent such
28 evidence, the undersigned concludes that preliminary injunctive relief is not contrary to the public

1 interest.

2 Therefore, plaintiff has sufficiently demonstrated all four of the factors required to be
3 entitled to preliminary injunctive relief. For these reasons, the undersigned recommends granting
4 plaintiff's motion for a temporary restraining order prohibiting enforcement of Special Condition
5 Number 12.

6 Special Condition Number 13 requires plaintiff to inform "all persons with whom you
7 have a significant relationship" about his prior criminal history. ECF No. 40-2 at 6. For this
8 special condition, plaintiff does not explain how he is likely to suffer irreparable harm in the
9 absence of preliminary relief. As far as the court can tell from the pleadings, this special
10 condition is not responsible for plaintiff's homelessness. Therefore, any irreparable harm is
11 entirely speculative in nature. The undersigned finds that plaintiff has failed to establish the
12 likelihood of irreparable harm required for a TRO. See Goldie's Bookstore, Inc. v. Superior
13 Court, 739 F.2d 466, 472 (9th Cir. 1984). Absent irreparable harm, a TRO is not warranted and
14 the court finds it unnecessary to address the remaining factors. Plaintiff's motion for a TRO for
15 Special Condition Number 13 should be denied.

16 **2. Association (Special Condition No. 17)**

17 Special Condition Number 17 prohibits plaintiff from "associat[ing] with any known sex
18 offenders, except as previously approved or instructed by your parole agent." ECF No. 40-2 at 7.
19 According to plaintiff's former parole officer, this "standard condition" is mandated by California
20 Penal Code § 3003.5(a) and is not "an absolute prohibition." See ECF No. 40-1 at 5-6. The
21 special condition requires prior approval from plaintiff's parole officer. Id. While plaintiff
22 attempts to demonstrate an irreparable injury based on a prior occasion in which he requested
23 advance permission to stay the night with another individual who was a convicted sex offender,
24 the affidavit from the former parole officer indicates that although prior approval was denied by
25 the Unit Supervisor, it did not lead to any parole violation even though "[p]laintiff's GPS tracker
26 revealed that [p]laintiff had stayed with this individual without... permission." ECF No. 40-1 at
27 6. Therefore, the court finds that plaintiff has not met his burden of demonstrating irreparable
28 harm in the absence of injunctive relief. For this reason, the undersigned recommends denying

1 plaintiff's TRO motion concerning Special Condition Number 13.

2 **3. Travel (Special Condition Nos. 19-22)**

3 In his reply, plaintiff concedes that he is not aware of any irreparable harm caused by
4 special condition number 19 restricting his travel to no more than 50 miles from his residence.
5 ECF No. 46 at 87.

6 Plaintiff's former parole agent states that the prohibition against hitchhiking "serves to
7 deter future criminality because Plaintiff does not have the ability to interact with strangers who
8 he could potentially victimize." ECF No. 40-1 at 6. Because all of plaintiff's victims were adult
9 strangers, this special condition has a direct nexus to plaintiff's criminal history.

10 Special Condition Number 22 which requires plaintiff to provide advance notification of
11 "the year, make, model, color, and license number" of any motor vehicle that he has access to is
12 meant to "ensure[] that Plaintiff can be located, especially in the event that his GPS tracker goes
13 dead—which Plaintiff allowed it to do no less than three times...." ECF No. 40-1 at 6.

14 The undersigned finds that plaintiff's vague allegations related to the special conditions
15 involving travel do not support a finding of irreparable future harm. See Goldie's Bookstore, Inc.
16 v. Superior Court, 739 F.2d 466, 472 (9th Cir. 1984) (emphasizing that "[s]peculative injury does
17 not constitute irreparable injury."). Therefore, the standard for issuing a TRO has not been met
18 and the undersigned recommends denying the motion with respect to Special Condition Nos. 19-
19 22.

20 **4. Employment (Special Condition No. 23)**

21 The court finds that plaintiff has not met his burden of demonstrating an irreparable injury
22 that will occur in the absence of a TRO for the special condition that requires any employment to
23 be pre-approved by his parole officer. Plaintiff's speculation that such an injury is likely to occur
24 is not legally sufficient. "Speculative injury does not constitute irreparable injury sufficient to
25 warrant granting a preliminary injunction." Caribbean Marine Services Co., Inc. v. Baldridge, 844
26 F.2d 668, 674 (9th Cir. 1988) (citing Goldie's Bookstore, Inc. v. Superior Court, 739 F.2d 466,
27 472 (9th Cir. 1984)). This is especially true in light of the fact that plaintiff has not been
28 employed in the HVAC field since 2000. In fact, according to plaintiff's former parole agent, he

1 never showed evidence that “he had even applied for a job.” See ECF No. 40-1 at 7. Plaintiff’s
2 allegations of injury are too speculative to warrant injunctive relief and the undersigned
3 recommends denying the TRO motion for Special Condition No. 23.

4 **5. Residence (Special Condition Nos. 24, 27, 28, 30)**

5 To the extent that plaintiff challenges Special Condition No. 24, his own pleading
6 indicates that it does not prevent his residency at a Christian ministry program. ECF No. 46 at 47.
7 Rather, he was unable to reside there because the single slot for a convicted sex offender was
8 already taken. Id. Therefore, the court does not find that the parole condition was responsible for
9 plaintiff’s lack of placement in the residential program. The availability of this residential option
10 was limited by the program’s bed space. With respect to the specific curfew hours, plaintiff’s
11 former parole agent attests that this special condition has not prevented other parolees from
12 making money by collecting recycling during the day or during non-business hours. See ECF No.
13 40-1 at 8. Based on this evidence, plaintiff has failed to demonstrate any irreparable harm that
14 will occur in the absence of injunctive relief. Accordingly, the undersigned recommends denying
15 the TRO motion with respect to the conditions of plaintiff’s residence.

16 **6. Possessions (Special Condition Nos. 31, 32, 35, 36)**

17 Neither plaintiff’s motion nor his reply makes any specific argument related to the special
18 conditions concerning his personal possessions. See ECF No. 10 at 15 (arguing that these special
19 conditions deprive him of “his fundamental right to possessions.”); see also ECF No. 40-2 at 7
20 (Special Condition Nos. 31-32, 35-36). That is not legally sufficient to meet plaintiff’s burden of
21 demonstrating the need for a TRO. Therefore, the court recommends denying the motion
22 regarding the special conditions related to plaintiff’s possessions as he makes no particularized
23 showing that he is likely to suffer irreparable harm in the absence of preliminary relief.
24 Accordingly, a TRO is not warranted.

25 **7. Computer Use and Electronic Media (Special Condition Nos. 57-58)**

26 The only two special conditions related to computer use which are not moot relate to the
27 search of plaintiff’s electronic devices. ECF No. 40-2 at 8-9. Plaintiff’s argument with respect to
28 these conditions is merely that they allow defendant to go “on a proverbial fishing trip” looking

1 for possible parole violations. ECF No. 46 at 84.

2 In light of Supreme Court case law upholding California's state statute requiring all
3 parolees to agree in writing to the suspicionless search of their persons, it is hard for the court to
4 envision plaintiff prevailing on the merits of his challenge to the suspicionless search of his
5 electronic devices while on state parole. See Samson v. California, 547 U.S. 843, 850 (2006)
6 (rejecting Fourth Amendment challenge to California Penal Code § 3067(a) and emphasizing that
7 "parolees have fewer expectations of privacy than probationers, because parole is more akin to
8 imprisonment than probation is to imprisonment."). Since plaintiff has not met his burden of
9 demonstrating the likelihood of success on the merits, the undersigned recommends denying the
10 TRO motion challenging Special Condition Numbers 57-58.

11 **8. Other (Special Condition Nos. 59, 62, 63)**

12 The undersigned recommends denying plaintiff's motion regarding the other special
13 conditions because he has not demonstrated that he is likely to suffer irreparable harm in the
14 absence of preliminary relief. Accordingly, a TRO is not warranted.

15 **VII. Plain Language Summary for Pro Se Party**

16 The following information is meant to explain this order in plain English and is not
17 intended as legal advice.

18 The court is revoking its prior order allowing you to use the pseudonym John Doe because
19 you filed public documents that contain your true name. The court is also substituting defendant
20 G. Viera Rosa for defendant Alderson in this matter. The case caption is modified to reflect these
21 changes and any future pleadings that you file should contain the correct names of both parties.

22 The court is granting your motion to schedule a settlement conference in this matter
23 following your release from custody on May 30, 2020. The settlement conference shall be
24 conducted by telephone and will be set by a separate court order. You are under a continuing
25 duty to update your address to ensure that you receive all subsequent court orders.

26 The court has reviewed all of the special conditions of your parole that are currently in
27 effect based on the September 23, 2020 parole terms and the further agreement by defendant to
28 remove Special Condition Numbers 55 and 56. The undersigned recommends that the TRO be

1 granted only as it concerns Special Condition Number 12 that prohibits you from “dat[ing],
2 socializ[ing], or form[ing] a romantic interest or sexual relationship with any person you know or
3 reasonably should know has physical custody of a minor.” Based on the court’s analysis, the
4 TRO motion should be denied with respect to all other special conditions.

5 If you do not agree with this recommendation, you have 14 days to explain why it is not
6 correct. Label your explanation as “Objections to Magistrate Judge’s Findings and
7 Recommendations.” The district court judge assigned to your case will then review the record
8 and make the final determination on your TRO motion.

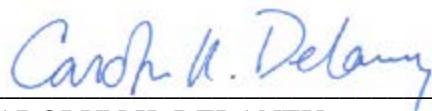
9 Accordingly, IT IS HEREBY ORDERED that:

- 10 1. Plaintiff’s motion to display his real name on mailings (ECF No. 43) is denied.
- 11 2. The court’s June 17, 2020 order granting plaintiff’s motion to proceed under the
12 pseudonym “John Doe” (ECF No. 4) is revoked.
- 13 3. Defendant’s request to substitute G. Viera Rosa as the defendant in this action (ECF
14 No. 45), construed as a motion, is granted.
- 15 4. The Clerk of Court is directed to update the caption of this case to reflect plaintiff’s
16 true name of Theron Kenneth Holston and to substitute G. Viera Rosa as the
17 defendant. All future filings in this case shall reflect this change.
- 18 5. Plaintiff’s motion to seal proceedings and documents (ECF No. 47) is denied.
- 19 6. Plaintiff’s motion to reinstate the court order referring this case to the ADR Pilot
20 Project (ECF No. 44) is granted. A telephonic settlement conference will be
21 scheduled by separate order in this case in order to ensure plaintiff’s access to and
22 participation therein.
- 23 7. Defense counsel is hereby directed to contact the court’s ADR coordinator, Sujean
24 Park, at spark@caed.uscourts.gov to schedule this matter for a telephonic settlement
25 conference.
- 26 8. All pending deadlines in this case set by order of April 8, 2021 (ECF No. 36) are
27 vacated and this matter is stayed pending the scheduling of a telephonic settlement
28 conference following plaintiff’s release from custody.

1 IT IS FURTHER RECOMMENDED that plaintiff's motion for a temporary restraining
2 order (ECF No. 10) be granted in part and denied in part as explained herein.

3 These findings and recommendations are submitted to the United States District Judge
4 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
5 after being served with these findings and recommendations, any party may file written
6 objections with the court and serve a copy on all parties. Such a document should be captioned
7 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
8 objections shall be served and filed within fourteen days after service of the objections. The
9 parties are advised that failure to file objections within the specified time may waive the right to
10 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

11 Dated: May 21, 2021



12 CAROLYN K. DELANEY
13 UNITED STATES MAGISTRATE JUDGE

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